FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

Second Appeal No. 346/2001
(Bhanudas Ganpat Sonone & 3 others Vs. Robert Sitaram Raulkar & 2 others)

Appeal	District :
Application No.	of 200
Writ petition	

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Mr. M.B. Badiye, Adv. for the appellants.
Mr. Talmale, Adv. for the respondents.

CORAM : Smt. Vasanti A. Naik, J.
DATED : 23rd July, 2007.

Heard the learned counsel for the parties.

The present appellants are the original plaintiffs. A suit was filed by the plaintiffs for specific performance of contract for sale of the suit property. According to the plaintiffs, the defendant no.1 had entered into an agreement of sale with the plaintiffs on 29/8/1979, whereby the defendant no.1 agreed to sell the suit property to the plaintiff in the sum of Rs. 16,000/-. Rs. 10,000/ were paid towards the earnest money. The sale deed was to be executed within a period of 11 months from the date of agreement of sale. It was the case of the plaintiff that the defendant no.1, however, executed a sale deed of the suit property in favour of the defendant no.2 on 28/12/1979, without consideration and hence the sale was not binding on the plaintiff. The plaintiff, in the alternative, sought

a decree of refund of earnest amount of Rs.10,000/-. The defendant nos. 1 and 2 filed their written statement and denied the claim of the plaintiff. It was pleaded by the defendant no.2 that the defendant no.1 executed an agreement of sale of the suit property in favour of the defendant no.2 on 20/9/1978. The registered sale deed was executed by the defendant no.1 in favour of the defendant no. 2 in view of the agreement of sale dated 20/9/1978. It is the case of the defendants that the contract between the defendant nos. 1 and 2 is a previous one and the agreement of sale executed in favour of the plaintiff on 28/8/1978 would not give right to the plaintiff to seek specific performance of contract.

The trial Court, on an appreciation of the evidence on record, held that the plaintiff failed to prove that there was an agreement of sale of the suit property between the defendant no.1 and the plaintiffs. The Court held that the plaintiffs were not entitled to a decree for specific performance of contract in view of the agreement dated 29/8/1979. The Court further recorded a categorical finding that the defendant no.1 had entered into a contract of sale with the defendant no.2 on 20/9/1978 and in spite of having prior knowledge of the agreement dated 20/9/1978, the plaintiff contracted to purchase the suit house subsequently by an agreement dated 28/9/1979. Therefore, the Court

decreed the suit of the plaintiff for refund of earnest amount. The appeal filed by the plaintiff against the judgment and decree passed by the trial Court, is also dismissed.

Both the Courts have properly appreciated the evidence tendered by the parties, to hold that the plaintiff was not entitled to a decree for specific performance of contract. The Courts have recorded a finding that the contract between the defendant nos. 1 and 2 was previous one and hence subsequent agreement between the plaintiff and the defendant no.1 would not create any right in favour of the plaintiff to claim specific performance of the subsequent agreement.

Since no substantial question of law arises in this second appeal, the same is dismissed with no order as to costs.

JUDGE

RMP